

RAND D. WEINBERG
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LAW OFFICES
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MANUEL M. WEINBERG
(1907 - 1987)
DAVID S. WEINBERG
RETIRED

June 7, 2010

The Honorable Winslow E. Burhans, III
Mayor, Town of New Market
39 West Main Street
P.O. Box 27
New Market, MD 21774

Re: Annexation Petition-10.3367 Acres
Lots 2R, 3, 4, 5, Outlot and part of Morning Gate Lane -Turnpike Farms
East Street Plaza Partnership, New Market Food Lion Center, LLC
and East Side Acres, LLC

Dear Mayor Burhans:

As you are aware, I represent East Street Plaza Partnership, New Market Food Lion Center, LLC and East Side Acres, LLC in connection with the proposed annexation of 10.3367 acres, more or less, into the Town of New Market.

On behalf of my clients, please treat this letter as our election to withdrawal the annexation that was filed on or about March 31, 2009.

As you are aware, we intend to re-file an Annexation Petition and submit a new Annexation Resolution and Annexation Agreement to you immediately upon the withdrawal of the prior annexation.

Thank you for your cooperation

Very truly yours,


Scott D. Miller

SDM:bf
Enclosure

Cc: East Street Plaza Partnership
New Market Food Lion Center, LLC
East Side Acres, LLC

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and East Side Acres, LLC

Dear Mayor Burhans:

Enclosed please find the new Petition for Annexation of 10.3367 acres, more or less, into the Town of New Market and the new proposed Resolution. This Petition and Resolution replaces the prior petition and resolution on the property which was previously withdrawn by the Petitioners. The property proposed to be annexed is located east of Maryland Route 75 and north of Maryland Route 144 and is comprised of Lots 2R, 3, 4, 5, Outlot and a portion of Morning Gate Lane in the Turnpike Farms subdivision. Currently, part of Lot 5 is occupied by McDonald's, Lot 4 is occupied by High's Dairy Store and Lot 2R is occupied by Food Lion.

Please schedule the enclosed Petition for Annexation for introduction at your next Mayor and Council meeting.

Thank you for your consideration.

Very truly yours,


Scott D. Miller

SDM:bf
Enclosure

Cc: East Street Plaza Partnership
New Market Food Lion Center, LLC
East Side Acres, LLC

**PETITION FOR ANNEXATION
OF 10.2223 ACRES, MORE OR LESS
INTO THE TOWN OF NEW MARKET**

BY THIS PETITION, request is herewith made to THE MAYOR AND COUNCIL OF THE TOWN OF NEW MARKET, MARYLAND, to annex 10.2223 acres of land, more or less, (hereinafter referred to as the "Property"), said Property being comprised of the property owned by NEW MARKET FOOD LION CENTER, LLC described as Lot 2R on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing 4.7456 acres, more or less (hereinafter "Lot 2R"); the property owned by NEW MARKET FOOD LION CENTER, LLC described as Outlot on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing 0.7215 acres, more or less (hereinafter "Outlot"); the property owned by EAST SIDE ACRES, LLC described as Lot 3 on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing .6616 acres, more or less (hereinafter "Lot 3"); the property owned by EAST STREET PLAZA PARTNERSHIP described as Lot 4 on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing 1.4097 acres, more or less (hereinafter "Lot 4"); the property owned by EAST STREET PLAZA PARTNERSHIP described as Lot 5 on the plat of subdivision entitled "Addition Plat, Addition of Seawright Corporation to Lot 5, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 71 Page 39 (incorrectly indexed as "Plat Book 70 Page 39") containing 2.2273 acres, more or less (hereinafter "Lot 5"); and a part the property owned by EAST STREET PLAZA PARTNERSHIP and dedicated to public use as "Morning Gate Lane (Variable Width R/W dedication to public use)" on the plat of subdivision entitled "Combined Preliminary/Final Plat And Resubdivision Plat, Section I, Lot 2 Into Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 62 Page 118, the part thereof to be annexed containing 0.4566 acres, more or less (which public street is currently maintained by Frederick County, Maryland)(hereinafter the "Road Bed") into the corporate limits of the TOWN OF NEW MARKET, MARYLAND (hereinafter the "Town"). NEW MARKET FOOD LION CENTER, LLC, EAST SIDE ACRES, LLC and EAST STREET PLAZA PARTNERSHIP are hereinafter collectively referred to as the "Petitioners"). The Property is contiguous to and adjoins the existing corporate area of the Town on its Eastern boundary, and this annexation will not create any area completely surrounded by the corporate boundaries of the Town which is not included within the said corporate area (commonly called "an enclave"). The Property is more particularly described by a survey of courses and distances which is attached hereto as **EXHIBIT A**, and made a part hereof.

The specific conditions upon which this Petition is submitted are as follows:

1. Petitioners shall pay the costs of any required advertising of the Annexation Resolution.
2. The Town shall not impose municipal ad valorem real estate taxes upon any part of the

Property being annexed until the July 1, 2011 to June 30, 2012 tax year. The Town shall not impose municipal ad valorem real estate taxes upon Lot 2 R or any improvements thereon until the earlier of (i) the expiration of the initial term of the Food Lion lease currently in effect, which by its terms shall expire on December 9, 2017 (hereinafter the "Food Lion Lease"); (ii) termination of the Food Lion Lease; or (iii) any expansion of the existing Food Lion.

3. The persons residing in the area to be annexed, if any, and the Property shall be added to the corporate boundaries of the Town and shall be generally subject to the provisions of the Charter of the Town, except as set forth to the contrary in the following paragraphs of this Petition.
4. The extension of new sanitary sewer, water and storm drain lines, driveways and all other public improvements typically provided by the Town and/or Frederick County within the Property, to the extent allowed by law and unless provided otherwise by the Annexation Resolution or by the Annexation Agreement, shall be at the expense of the owners(s) or developer(s) requesting the same and shall be at no cost to the Town and shall be subject to the conditions set forth in the Annexation Resolution and/or Annexation Agreement, if applicable.
5. Subject to all appropriate laws and administrative requirements, the Property shall be zoned to the Town's Mixed Commercial (MC) zoning classification). In the event that the Town's Mixed Commercial (MC) zoning classification for the Property permits development of uses substantially different than the use authorized, or at a substantially higher, not to exceed 50%, density than could be granted for the proposed development, in accordance with the zoning

classification assigned to the Property by Frederick County at the time of the Annexation, the Town will cooperate in all regards and make all reasonable efforts to secure approval of said requested zoning classifications and the requested annexation, including seeking from the Board of County Commissioners of Frederick County, Maryland, the grant of a waiver of zoning consistency if required.

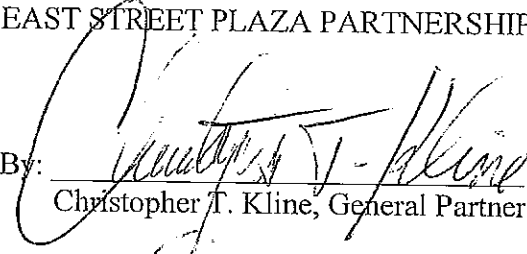
6. The Town will pursue any amendment to the Water and Sewer Service Area Agreement executed between the Town and the Board of County Commissioners for Frederick County, Maryland which is reasonably necessary to make available to Lot 2R, Lot 3, 4 and Lot 5 public water and sewer service sufficient to support the maximum density of development permitted on the Property based upon the Town's Mixed Commercial (MC) zoning classification.
7. The Town will provide appropriate advertisement and notice of the hearing to be set by the Town on this Petition and notice to all entitled state and county agencies pursuant to Article 23A Section 19 of the Annotated Code of Maryland.
8. The Town's Mayor will cause the signatures of the Petitioner to be verified and shall make such other verifications as required by law.

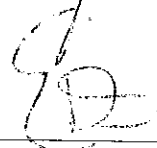
Petitioner is the owners of at least twenty-five percent (25%) of the assessed valuation of the Property, and represents at least twenty-five percent (25%) of the residents and registered voters who reside on the Property. This Petition may be signed in counterparts and in any number of counterparts with the same effect as if all parties hereto had executed the same document. All such counterparts shall be construed together and shall constitute one Petition.

WITNESS the hands and seals of the Petitioner on the ____ day of _____, 2010.


PETITIONERS:

EAST STREET PLAZA PARTNERSHIP

By: 
Christopher T. Kline, General Partner

By: 
Edward D. Scott, General Partner

NEW MARKET FOOD LION CENTER, LLC

By: 
Edward D. Scott, Managing Member

EAST SIDE ACRES, LLC

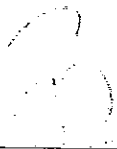
By: 
Edward D. Scott, Managing Member

EXHIBIT A
METES AND BOUNDS DESCRIPTION

EXHIBIT A
METES AND BOUNDS DESCRIPTION



September 11, 2009
HS.A Job No. 5663
Page 1 of 3

**Description of Property
To be added into the Corporate Boundaries of
The Town of New Market**

**10.2223 acres±
Lands of East Side Acres, LLC,
East Street Plaza Partnership &
New Market Food Lion Center, LLC**

All those pieces or parcels of land lying on the North side of County Route #1317 also known as Old National Pike and northeast of the Town of New Market, New Market Election District #9, Frederick County, Maryland. Being all of those lands conveyed unto New Market Food Lion Center, LLC, a Maryland limited liability company, by deed dated August 5, 2003 and recorded in Liber 4481 at Folio 84 on March 19, 2004, and as shown on a plat of survey entitled "Combined Preliminary/Final Plat and Resubdivision Plat, Section I, Lot 2 into Lots 2R, 3-5 & Outlot, Turnpike Farm" as recorded in Plat book 62 at page 118 and all of the land conveyed unto East Street Plaza Partnership, a Maryland general partnership, by deed dated August 10, 2001 and recorded in Liber 2932 At Folio 1130 on August 17, 2001, and as shown on a plat of survey entitled "Addition Plat, Addition of Seawright Corporation to Lot 5, Turnpike Farm" as recorded in Plat book 71 at page 39 and a part of those lands conveyed unto East Street Plaza Partnership, by deed dated October 27, 1997 and recorded in Liber 2344 at Folio 885 on October 28, 1997, and a part of those lands conveyed unto East Street Plaza Partnership, by deed dated October 27, 1997 and recorded in Liber 2344 at Folio 863 on October 28, 1997. All deeds recorded among the Land Records of Frederick County, Maryland. All lands are shown and contained within a survey for annexation entitled "Plat of Annexation, into the Town of New Market, the property of East Street Plaza Partnership, and property of New Market Food Lion Center, LLC", as surveyed and prepared by Harris, Smariga & Associates, Inc. dated September, 2009 and being more particularly described in accordance with said survey as follows:

BEGINNING for the same at a point on the existing Town of Market Corporate Limits as recorded in Liber 6200 at folio 01 known as Resolution No. 03-01. Said point at the end of the 8th or S. 36° 42' 09" W. 324.19' line of said resolution and labeled #2038 on said Plat book 71 at page 39, thence running with said line reversed and with the outlines of

the lands to be added to said corporate limits as now surveyed the following sixteen (16) courses and distances.

N. 36° 42' 09" E.	324.19'	to a point, thence
S. 53° 17' 51" E.	127.00'	to a point, thence
S. 36° 52' 23" E.	365.28'	crossing over Morning Gate Lane to a point, said point being the corner of an Outlot as shown on Plat book 70 at page 164 thence
S. 36° 56' 41" E.	97.63'	to a point, thence
S. 22° 29' 52" W.	80.61'	to a point, thence
S. 67° 30' 08" E.	571.15'	to a point, thence
S. 12° 40' 33" W.	318.33'	to a point, thence
S. 57° 40' 33" W.	56.56'	to a point on the Northern right of way of County Route 1317 (Old National Pike), thence with the right of way
N. 77° 19' 27" W.	263.98'	to a point, thence
N. 70° 23' 07" W.	69.36'	to a point, thence
279.00' along the arc of a curve deflecting to the right, having a radius of 360.00', said arc being subtended by a chord bearing N. 55° 08' 59" W. 272.07' to a point, thence		
N. 18° 00' 16" W.	48.06'	to a point, thence
N. 40° 15' 18" W.	50.99'	to a point, thence
N. 28° 56' 42" W.	338.67'	to a point, thence
N. 29° 12' 46" W.	125.56'	to a point, thence
N. 55° 11' 24" W.	162.58'	to the place of beginning.

September 11, 2009
HSA Job No. 5663
Page 3 of 3

The area contained by the foregoing amounts to 445,284 square feet or 10.2223 acres of land more or less.

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RESOLUTION NO. _____
OF
THE TOWN OF NEW MARKET
TO ENLARGE THE CORPORATE BOUNDARIES
OF THE TOWN, BY ADDING THERETO
10.2223 ACRES OF LAND, MORE OR LESS,
OWNED BY EAST STREET PLAZA PARTNERSHIP,
NEW MARKET FOOD LION CENTER, LLC,
AND EAST SIDE ACRES, LLC

RESOLUTION of the Mayor and Council of The Town of New Market, adopted pursuant to the authority of Article 11-B of the Constitution of Maryland and Section 19 of the Article 23A of the Annotated Code of Maryland, entitled, "Corporations- Municipal," subheading "Home Rule," "Annexation" to enlarge the corporate boundaries of The Town of New Market (hereinafter the "Town") as identified in Article I, Section 23-4 (Corporate limits) of the Charter of the Town and the description thereof by courses and distances, as referenced said Charter, by adding or annexation to the present Corporate boundaries, the following described parcels of property:

The 10.223 acres of land, more or less, (hereinafter referred to at the "Property") being comprised of the property owned by NEW MARKET FOOD LION CENTER, LLC described as Lot 2R on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing 4.7456 acres, more or less (hereinafter "Lot 2R"); the property owned by NEW MARKET FOOD LION CENTER, LLC described as Outlot on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing 0.7215 acres, more or less (hereinafter "Outlot"); the property owned by EAST SIDE ACRES, LLC described as Lot 3 on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing .6616 acres, more or less (hereinafter "Lot 3"); the property owned by EAST STREET PLAZA PARTNERSHIP described as Lot 4 on the plat of subdivision entitled "Correction Plat, Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 70 Page 164, containing 1.4097 acres, more or less (hereinafter "Lot 4"); the property owned by EAST STREET PLAZA PARTNERSHIP described as Lot 5 on the plat of subdivision entitled "Addition Plat, Addition of Seawright Corporation to Lot 5, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 71 Page 39 (incorrectly indexed as "Plat Book 70 Page 39") containing 2.2273 acres, more or less (hereinafter "Lot 5"); and a part the property owned by EAST STREET PLAZA PARTNERSHIP and dedicated to public use as "Morning Gate Lane (Variable Width R/W dedication to public use)" on the plat of subdivision entitled "Combined Preliminary/Final Plat And Resubdivision Plat, Section I, Lot 2 Into Lots 2R, 3-5 & Outlot, Turnpike Farm" recorded among the Plat Records of Frederick County, Maryland in Plat Book 62 Page 118, the part thereof to be

annexed containing 0.4566 acres, more or less (which public street is currently maintained by Frederick County, Maryland)(hereinafter the "Road Bed"); said Property further described by perimeter metes and bounds as described on **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, the Property to be annexed is owned by the East Street Plaza Partnership, New Market Food Lion Center, LLC, and East Side Acres, LLC (hereinafter collectively the "Owners"); and

WHEREAS, the Owners have presented to the Mayor and Council of the Town a Petition proposing annexation of the Property described in this Resolution; and

WHEREAS, the Mayor, as the presiding officer of the Town, has caused the signatures thereon to be verified, and has ascertained that the Petition otherwise conforms to the requirements of Section 19 (c) of Article 23A (Corporations- Municipal) of the Annotated Code of Maryland and thereupon introduced this Resolution at the public meeting of the Mayor and Council of the Town on _____, 2010; and

WHEREAS, pursuant to publication of notice, in accordance with Section 19 (d) of Article 23A (Corporations- Municipal) of the Annotated Code of Maryland, a public hearing was conducted in the Town on _____, 2010 at 7:30 p.m. in the Town Hall;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of The Town of New Market as follows:

SECTION ONE: The corporate boundaries of The Town of New Market be and the same are hereby enlarged by adding of and annexing thereto the lands adjoining the present corporate boundaries of The Town of New Market as particularly described in the title of this Resolution.

SECTION TWO: The persons, if any residing on the Property hereby annexed, and their Property, shall be and are hereby added to the corporate boundaries of the Town, subject to the provisions of the Charter of the Town, and the acts, ordinances, resolutions and policies of the Town without special conditions relating to municipal taxation, services or facilities, (other than as expressly set forth herein or in a separate written agreement with the Town) or other special treatment of residents for the Property to be annexed.

SECTION THREE: The Property annexed herein shall be and are hereby zoned as follows:

(1) That the portion of the Property known and described as Lot 2R, the Outlot, Lot 3, Lot 4 and Lot 5 shall be zoned to the Town's Town's Mixed Commercial (MC) zoning classification; and

(2) That the portion of the Property known and described as the Road Bed shall be zoned to the Town's Agriculture District zoning classification.

SECTION FOUR: Article I, Section 23-4 (Corporate limits) of the Charter of The Town of New Market be and is hereby amended to include the Property described in this Resolution.

SECTION FIVE: The Town shall not impose municipal ad valorem real estate taxes upon any of the Property which is a part of the annexation until the July 1, 2011 to June 30, 2012 tax year. The Town shall not impose municipal ad valorem real estate taxes upon Lot 2 R or any improvements thereon until the earlier of (i) the expiration of the initial term of the Food Lion lease currently in effect which by its terms shall expire on December 9, 2017 (hereinafter the "Food Lion Lease"); (ii) termination of the Food Lion Lease; or (iii) any expansion of the existing Food Lion.

SECTION SIX: East Street Plaza Partnership or their successors or assigns shall pay all the costs, engineering fees, attorney's fees, costs of insertion of the public notices, and all other expenses incurred by the Town in connection with this annexation.

AND BE IT FUTHER RESOLVED, that this Resolution shall become effective at the end of forty-five (45) days following its enactment, unless a proper petition for referendum hereon shall be filed, in accordance with and as permitted by law.

BY ORDER OF:

THE TOWN OF NEW MARKET

By: _____
Winslow F. Burhans, III, Mayor

By: _____
Lawrence Romanell, Town Council

By: _____
Rita Mueller, Town Council

By: _____
David Price, Town Council

By: _____
Shannon Rossman, Town Council

By: _____
Dennis Kimble, Town Council

INTRODUCED: _____, 2010

ENACTED: _____, 2010

EFFECTIVE: _____, 2010

ATTEST:

Town Clerk